

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LUCY AMADOR, et. al, on behalf of themselves
and all others similarly situated,

Plaintiff

***RESPONDING AFFIRMATION IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT***

-against-

SUPERINTENDENTS OF THE DEPARTMENT OF
CORRECTIONAL SERVICES ("DOCS")
ANGINELL ANDREWS, et. al

06:10 –cv-06702 (DGL) (JWF)

Defendants

George V.C. Muscato, Esq., hereby submits the following Responding Affirmation in Support of Defendant Robert Smith's Motion for Summary Judgment pursuant to Federal Rules of Civil Procedure 56.


1. I am attorney licensed to practice law in the State of New York and in the United States District Court for the Western District of New York.
2. I am retained by Defendant, Corrections Officer Robert Smith, in the above-captioned matter, and as such I am fully familiar with the facts and circumstances relevant to this case. I have reviewed all of the pleadings filed herein, along with additional declarations, affidavits, depositions, exhibits, and responses to discovery demands.
3. All information contained herein is made upon personal knowledge, unless stated upon information and belief. The following information is intended to supplement Defendant's response to Plaintiff's Opposition to Defendant's Motion for Summary Judgment.
4. The instant case has been pending for over eight (8) years, during which time numerous motions have been filed by various parties. Specifically, Defendant Smith filed a dispositive pre-trial motion in 2003 concerning a procedural issue; namely Plaintiff's standing to sue.

Said motion was denied by Hon. Judge Kevin T. Duffy nearly five years later, in late 2007 (*See Plaintiff's Appendix to Local Rule 56 Statement* ["Plaintiff's Appendix"], Exhibit 2).

5. Thereafter, Judge Duffy set a final dispositive motion date of March 1, 2010 for motions "relating to any of the Pending Damages Claims" (*See Plaintiff's Appendix*, Exhibit 3).
6. Your deponent construed this language to mean that Defendant Smith was limited to arguing against damages, and not liability, in his motion for summary judgment. As a result, Defendant Smith submitted motion papers requesting summary judgment on damages only.
7. Therefore, Defendant Smith abandoned the motion upon receipt of Plaintiff's opposition papers, which highlighted that Defendant Smith's papers failed to address the issue of liability (*See Plaintiff's Appendix*, Exhibit 6). The Court also informed your deponent that Defendant Smith's motion was not properly filed under seal.
8. Judge Duffy then severed the instant matter and transferred same to the Western District of New York on December 7, 2010 (*See Plaintiff's Appendix*, Exhibit 7).
9. Your deponent thereafter made an oral request before this Court to file a dispositive pre-trial motion. Judge Feldman granted said request, and also acknowledged Plaintiff's right to challenge the timeliness of said motion.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Lockport, New York
April 19, 2012


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